

AO 120 (Rev. 3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Southern District of Indiana on the following ☒ Patents or ☒ Trademarks:

DOCKET NO. 1:08-cv-1304-B/S	DATE FILED 9/26/2008	U.S. DISTRICT COURT Southern District of Indiana
PLAINTIFF GASAMERICA SERVICES, INC.		DEFENDANT DIWAN, LLC
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 2,908,069		GASAMERICA (See Complaint attached)
2 2,964,657		
3 3,003,216		
4 2,092,362		
5 2,092,359		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY			
	<input checked="" type="checkbox"/> Amendment	<input checked="" type="checkbox"/> Answer	<input checked="" type="checkbox"/> Cross Bill	<input checked="" type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK		
1				
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3				
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK <i>Paula Rogers</i>	(BY) DEPUTY CLERK <i>Michael Carmichael</i>	DATE 9/29/2008
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
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SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

GASAMERICA SERVICES, INC.

Plaintiff,

v

DIWAN, LLC.

Defendant.

)
)
) Civil Action No. _____

) **1 : 08 -cv-1304-SEB-JMS**
)
)

) **JURY DEMANDED**
)
)

COMPLAINT

Comes now the Plaintiff, GASAMERICA SERVICES, INC. (hereinafter "GasAmerica"), by counsel for its Cause of Action against the Defendant, DIWAN, LLC, hereinafter ("Diwan"), and alleges as follows:

PRELIMINARY STATEMENT OF CASE

1. Plaintiff GasAmerica is in the business of running a chain of gas stations/truck stops and convenience stores. GasAmerica has been operating service stations, convenience stores and truck stops (collectively referred to herein as "service stations") in several states in the Midwest since at least the mid 1980s. The term GASAMERICA® is the subject of United States Trademark Registrations Nos. 2,908,069, 2,964,657, 3,003,216, 2,092,362, and 2,092,359. Diwan is believed to have been operating a service station under the name GASAMERICA® since about 2007.

2. Defendant Diwan is well aware of Plaintiff's rights in its GASAMERICA® mark, as Plaintiff informed Diwan of its infringement in January 2008. Diwan continues to use the

name GASAMERICA® in connection with his service station in disregard of Plaintiff's mark to falsely mislead and confuse consumers that Diwan's service station is affiliated with GasAmerica Services, in violation of the Lanham Act.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action by reason of the Trademark Act of 1946, 15 U.S.C. §§1051-1127, and by reason of §1338 of Title 28, United States Code. Venue in this district is based on §1391(b) of Title 28, United States Code.

THE PARTIES

4. Plaintiff GasAmerica Services, Inc. and its predecessors in interest have been in the business of operating a chain of service stations, truck stops and convenience stores since about 1986; and have been using the name GASAMERICA® in connection with its service stations truck stops and convenience stores since 1986.

5. GasAmerica Services, Inc. is incorporated in the State of Indiana and continues to exist as a corporation under Indiana law.

6. GasAmerica maintains its principal place of business in Greenfield, Indiana and does business or otherwise has a market presence, through reputation or otherwise, throughout the United States.

7. Upon information and belief, Defendant, Diwan LLC is a limited liability corporation formed in the state of Iowa that has its principal place of business at 410 North Main Street, Davenport, IA 52801.

8. Upon information and belief, the registered agent of Defendant Diwan is Marc R. Engelmann, of 1111 E. River Drive, Davenport, IA 52803.

THE TRADEMARK AND THE INSTANT CONTROVERSY

9. GasAmerica owns certain trademarks and service marks for its service stations, and the products such as gas and oil sold at its service stations including *inter alia*, the trademark and service mark GASAMERICA®. The GASAMERICA® mark distinguishes GasAmerica's service stations from similar stations operated by others here in the US. GasAmerica has established and has maintained high quality standards for the service stations identified by the GASAMERICA® marks. The Plaintiff maintains a website at www.gasamerica.com, that shows the use of the mark in connection with Plaintiff's services; and photographs showing the examples of the Plaintiff's use of the mark are attached as Exhibits A1-A4.

10. GasAmerica adopted and has continuously used the GASAMERICA® mark in conjunction with its products and services since at least 1983

11. GasAmerica services is the owner of several valid and enforceable trademarks and service mark registrations including U.S. Reg. No. 2,092,359; U.S. Reg. No. 2,092,362; U.S. Reg. No. 3,003,216; U.S. Reg. No. 2,964,657; and U.S. Reg. No. 2,908,069. U.S. Reg. Nos. 2,092,359 and 2,092,362 have become incontestable within the meaning of Section 15 of the Lanham Act.

12. GasAmerica is a significant force within its market, and its stations and its GASAMERICA® mark have acquired wide renown and have become distinctive in the minds of the purchasing public.

13. Service stations bearing the GASAMERICA® name are immediately identified by the purchasing public with GasAmerica.

14. GasAmerica's stations, convenience stores and products have come to be and are well and favorably known to the consuming public.

15. GasAmerica has built up a large and profitable business and now has valuable goodwill in the GASAMERICA® mark.

16. The GASAMERICA® mark has now become distinctive of GasAmerica in intrastate and interstate commerce.

17. Since as early as 1983, GasAmerica has operated its business throughout the State of Indiana and beyond, and has engaged in advertising and promotion of its services in a variety of advertising and promotional activities, and has spent considerable sums of money to advertise and promote its products and services, all using the GASAMERICA® mark.

18. Upon information and belief, GasAmerica and its GASAMERICA® mark enjoyed widespread interstate exposure in media and advertising prior to whenever Diwan may have begun its unlawful use of GASAMERICA®.

19. On information and belief, Defendant Diwan operates one and possibly two service stations in Davenport, IA under the name "Gas America." Photographs showing Diwan's use of GAS AMERICA is shown in Exhibits B1-B3.

20. Because Diwan's service station(s) use Plaintiff's registered mark, GASAMERICA® identically to Plaintiff, consumers and especially traveling consumers are likely to become confused or mistaken, or be deceived into believing that Defendant Diwan's products and services are somehow related to, sponsored by, or originate from Plaintiff

GasAmerica and its GASAMERICA® service stations.

21. Defendant Diwan has infringed and continues to infringe Plaintiff GasAmerica's rights in the GASAMERICA® mark by its operation of an identically named service station without conducting any search of common law uses of trademarks, without any attempt to avoid infringement, and with a malicious intent to deceive and defraud the public.

22. Plaintiff GasAmerica had previously warned Defendant Diwan that its use of GASAMERICA® infringed GasAmerica's trademark rights in its GASAMERICA® mark. After this warning was sent, Defendant Diwan LLC continued to use GASAMERICA®, evidencing a willful desire to infringe the Plaintiff's mark, of the type that makes this case and this infringement exceptional within the meaning of the Lanham Act.

23. Defendant Diwan's misappropriation and use of the GASAMERICA® mark in intrastate and interstate commerce is likely to cause, and likely has in fact, caused confusion and mistake, and to deceive purchasers at Diwan's service station and GasAmerica's potential customers as to the relationship between GasAmerica and Diwan.

24. Defendant Diwan is likely to continue operating under the infringing GASAMERICA® mark unless enjoined by this Court.

25. The operation of Defendant Diwan's service station having the GASAMERICA® mark used in connection therewith is likely to induce persons to buy from, use, recommend or refer to Diwan's service stations based on the mistaken and confused belief that Diwan LLC is part of, licensed by, approved by or endorsed by GasAmerica, which deception, confusion and mistake will result in great damage to GasAmerica.

26. Diwan has promoted its service station bearing the GASAMERICA® mark for the

wrongful and illegal purpose of trading on the goodwill and reputation of GasAmerica, capitalizing on the considerable sums of money spent by GasAmerica in advertising and promotion of its services and other establishment of such goodwill of the public in its stations, and misleading the purchasing public into believing that Diwan's service station is legitimately connected with, sponsored or approved by GasAmerica.

27. Diwan has intentionally appropriated GasAmerica's GASAMERICA® trademark with the intent of causing confusion, mistake and deception as to the source of its products and with the intent to palm off its products and those of GasAmerica's, and this confusion, deception and mistake will cause great damage to GasAmerica, and as such, Diwan has committed trademark infringement and unfair competition under federal law.

28. Despite clear and unequivocal notice, Diwan has failed and refused to cease and desist using the GasAmerica's GASAMERICA® mark or to change their mark.

29. Diwan has unfairly traded upon and appropriated the reputation and goodwill of GasAmerica as represented by GasAmerica's GASAMERICA® mark, and is committing fraud and deception on the public.

30. Diwan's continuing infringing activity demonstrates a willful and bad faith intent to create confusion, deception, and mistake in the minds of GasAmerica's customers and potential customers, and to trade upon GasAmerica's goodwill by implying a similarity, identity and connectional relationship between GasAmerica's stations and Diwan's station, and between the business of GasAmerica and the business of Diwan, as a result of which Diwan has been and will be unjustly enriched.

31. The use by Diwan of the GASAMERICA® mark for its service stations is likely

to cause confusion, mistake and deception as to the source and origin of Diwan's products and services.

32. GasAmerica has been damaged by reasons of the acts of Diwan, as alleged herein, and GasAmerica is entitled to three times the greater of its damages or Diwan's profits; and reasonable attorneys' fees by reason of Diwan's fraud and deceit under 15 U.S.C. §1117(b) for the various trademark related infringements of GasAmerica's rights.

COUNT I

INFRINGEMENT AND COUNTERFEITING OF THE

GASAMERICA'S REGISTERED TRADEMARKS AND SERVICE MARKS

33. All of the allegations contained in paragraphs 1 through 32 are hereby incorporated by reference.

34. Defendant Diwan's unauthorized use of Plaintiff GasAmerica's marks in connection with the Diwan's service station, that have not been approved by the Plaintiff GasAmerica, is likely to cause confusion and mistake, and to deceive consumers as to the source or origin of the products.

35. Defendant Diwan's use in commerce of reproductions, counterfeits, copies or colorable imitations of the Plaintiff's registered GASAMERICA® mark in connection with the sale, offering for sale, distribution or advertising of its goods is likely to cause confusion; or to cause mistake or deceive customers or potential customers.

36. The aforesaid acts of Defendant have been willful and deliberate.

37. The acts of Defendant described above infringe Plaintiff GasAmerica's

trademarks, with consequent damage to Plaintiff GasAmerica, and the business and goodwill symbolized by Plaintiff GasAmerica's federally registered trademark in violation of §32 of the Lanham Act, 15 U.S.C. §1114.

38. Defendant Diwan's acts of trademark infringement have caused, and continue to cause great and irreparable injury to Plaintiff GasAmerica, and to its trademarks, and to the business and goodwill represented thereby, in an amount that cannot be ascertained at this time and, unless restrained, will cause further irreparable injury, leaving Plaintiff GasAmerica with no adequate remedy at law.

39. By reason of the foregoing, Plaintiff GasAmerica is entitled to injunctive relief against Defendant Diwan restraining further acts of trademark infringement and, after trial, to recover any damages proven to have been caused by reason of Defendant's aforesaid acts of infringement of Plaintiff's registered marks.

40. The damages and profits Defendant obtained through its infringement of Plaintiff GasAmerica's registered trademarks is such, that the court, in its injunction, should enter judgment for the Plaintiff, for three times the amount of profits, as provided for in 15 U.S.C. §1117.

41. That the willful nature of Defendant Diwan's infringement of Plaintiff GasAmerica's trademarks causes this case to become exceptional within the meaning of 15 U.S.C. §1117, thereby justifying the award of reasonable attorney's fees and costs to the Plaintiff GasAmerica.

42. That the acts of counterfeiting performed by Defendant Diwan entitle Plaintiff to the trebled damages, attorneys fees, costs and/or statutory damages provided by the Lanham Act

as remedies for such acts.

COUNT II

VIOLATION OF SECTION 43(a) OF THE LANHAM ACT

43. All the allegations in paragraph 1 through 42 of the Complaint are hereby incorporated by reference.

44. Diwan has violated 15 U.S.C. §1125(a) by using the term GASAMERICA® in connection its service station, thereby falsely designating the origin of Diwan's products and services, and by using in connection therewith a false designation of origin, a false description or representation, including the GASAMERICA® marks tending to falsely describe or represent the same, and has caused such products and services to enter into interstate commerce.

46. The foregoing acts and conduct by Defendant Diwan constitute false designation of origin, passing off and false advertising in connection with services distributed in interstate commerce in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

47. GasAmerica has been damaged by Diwan's use of such false descriptions representations or designations or advertising, in the manner herein alleged.

48. Diwan has represented and continues to represent falsely that Diwan's services and products are legitimately connected with GasAmerica; describe falsely that Diwan's products and services emanate from or are sponsored or approved by GasAmerica; designate falsely that Diwan's products originated from GasAmerica; all of which constitute violation of §43(a) of the Lanham Act, 15 U.S.C. §1125(a).

49. Diwan's actions are irreparably damaging to GasAmerica and will continue to

irreparably damage GasAmerica unless enjoined by this Court, as a result of which GasAmerica is without an adequate remedy of law.

50. GasAmerica will not be able to precisely determine the nature or amount of damage to its reputation, or to the reputation to its products as the result of the activities of Diwan.

RELIEF SOUGHT

WHEREFORE, Plaintiff GasAmerica prays that:

1. Diwan and each of its officers, agents, servants, employees, attorneys, and successors and all those in active concert and participation with them, be hereby preliminarily and permanently enjoined from:

- a. using, directly and indirectly, any name, trademark or service mark of GasAmerica, including specifically the marks "GASAMERICA®" or any colorable variation thereof, or any name or trademark or service mark which is likely to cause confusion or to cause mistake or to deceive the public with respect to GasAmerica's trademarks and service marks, including the GASAMERICA® mark;
- b. doing any act likely to trade upon the goodwill or business reputation of GasAmerica or dilute the distinctive quality of the trademarks and service marks of GasAmerica;
- c. expressly or impliedly representing Diwan, separately or collectively, or Diwan's service station or any other product or service to customers,

potential customers or to the public to be affiliated in any way with GasAmerica;

- d. in connection with the sale, offering for sale, distribution, advertising or promotion of any of Diwan's products, representing by words or conduct that any product or service, provided, offered for sale, sold, advertised or rendered, thereby is authorized, sponsored or endorsed by or otherwise connected with GasAmerica;
- e. engaging in deceptive trade practices;
- f. infringing, damaging, disparaging, diluting or misappropriating GasAmerica's rights in its trademarks and service marks, reputation and/or goodwill therein;
- g. using any GasAmerica mark as a corporate name or as an assumed business name; or maintaining any registrations or filings with any federal state or local agencies in the name of any GasAmerica mark or anything confusingly similar thereto; and/or
- i. falsely advertising any of its goods or services.

2. GasAmerica be given a judgment against Diwan and its successors and assigns in the amount of three times the greater of GasAmerica's damages or Diwan's profits and all attorneys' fees, costs, and/or expenses incurred or expended in connection in accordance with 15 U.S.C. §1117(b).

3. The Court finds that Plaintiff GasAmerica's GASAMERICA® mark and registration is valid and subsisting.

4. The Court finds that Defendant Diwan has committed acts of counterfeiting the Plaintiff GasAmerica's GASAMERICA® mark.

5. The Court finds that Defendant Diwan has infringed and has willfully infringed Plaintiff GasAmerica's GASAMERICA® mark.

6. The Court finds that Defendant Diwan has committed acts of palming off, unfair competition and false advertising under the Lanham Act.

7. Plaintiff GasAmerica be awarded such other and further relief as is just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Respectfully submitted,



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